MORRISON | FOERSTER

Client Alert.

April 25, 2011

Leading the Nation, California Signs 33% Renewable Portfolio Standard into Law

By Dian Grueneich and Theresa Cho

Reaffirming California's strong commitment to the development and utilization of renewable energy sources, Governor Jerry Brown recently signed Senate Bill X1 2, which requires all California utilities to generate 33% of their electricity from renewables by 2020. The new 33% renewable portfolio standard (RPS)—the most ambitious RPS in the country—sends a strong message to renewable energy developers that California will continue to support both short-term and long-term investment in renewable energy sources in the state.

HOW DOES THE LAW WORK?

While SB X1 2 revises a number of details in the existing California RPS statutes, the bulk of its impact for developers will derive from a few key provisions. The bill

- Sets a three-stage compliance period requiring all California utilities—including independently owned utilities (IOUs), energy service providers, and community choice aggregators (CCAs)—to generate 33% of their electricity from renewables by 2020

    o   20% by December 31, 2013

    o   25% by December 31, 2016

    o   33% by December 31, 2020

- Requires the RPS to be met increasingly with renewable energy that is supplied to the California grid and is located within or directly proximate to California. SB X1 2 mandates that renewables from this category make up

    o   At least 50% for the 2011-2013 compliance period

    o   At least 65% for the 2014-2016 compliance period

    o   At least 75% for 2016 and beyond

- Sets rules for the use of Renewable Energy Credits (RECs)

    o   Establishes a cap of no more than 25% unbundled RECs going towards the RPS between 2011 and 2013, 15% from 2014 to 2016, and 10% thereafter

    o   Does not allow for the grandfathering of Tradable REC contracts executed before 2010, unless the contract was (or is) approved by the California Public Utilities Commission (CPUC)

    o   Allows banking of RECs for three years only

    o   Allows Energy Service Providers, CCAs, and IOUs with less than 60,000 or fewer customers to use 100% RECs to meet the RPS

Client Alert.

- Eliminates the Market Price Referent (MPR), which was a benchmark to assess the above-market costs of RPS contracts based on the long-term ownership, operating, and fixed-price fuel costs for a new 500 MW natural gas-fired combined cycle gas turbine. Using the MPR, the CPUC would provide above-market funds to cover contract costs that exceeded the MPR

  o Requires the CPUC to establish a cost limit for each IOU, and authorizes IOUs to stop procuring renewable energy beyond the cost limit

- Requires the CPUC to adopt a standard tariff for renewable projects up to 3 MW in size with a 750 MW statewide cap on eligibility for the tariff.

NEW CHALLENGES AND OPPORTUNITIES

The signing of SB X1 2 is good news for renewable energy developers. The previous RPS, which required a 20% renewable portfolio by 2010, has proven to be a powerful driver of investment in renewable energy. Since 2003, the RPS has led to the development of 45 new renewable energy projects and 1,702 MW of new capacity. During that time, the CPUC has approved 181 contracts for about 14,000 MW of new and existing eligible renewable energy capacity.

And the trend shows no sign of slowing down. On the contrary, the past few years have seen a dramatic increase in the participation of larger and more experienced developers submitting bids, which has resulted in 100,000 GWh of bids in 2009 alone. The signing of SB X1 2 should provide further momentum to this already fast-developing market.

On the other hand, by eliminating the MPR—a cost-control method—and replacing it with a cost cap, SB X1 2 will compel developers to fit their projects within an IOU's overall fixed budget for implementing the RPS. This may produce a rush by developers to get their projects on the table before there is any danger of the IOU reaching the cap. In addition, the new law requires IOUs to compare the costs of each proposed project against the costs of the others, which will force more competition in the market.

The new 33% RPS will interconnect with California's recent substantial investment in transmission infrastructure, which allows for the efficient conveyance of electricity from renewable energy developments. In the past five years, under the leadership of the CPUC, California has streamlined the process of siting transmission lines, and has successfully permitted three major new transmission projects, resulting in more than $6 billion of new energy infrastructure to carry renewable power.

While these transmission lines will deliver much of the renewable power California needs, they are not sufficient to meet the magnitude of the increase in demand caused by the move to a 33% RPS. There is still an opportunity to develop additional interconnection lines that will facilitate the next generation of renewable energy needed to fulfill the mandate of SB X1 2.

Morrison & Foerster has extensive experience in every aspect of the siting, permitting, and financing of renewable energy projects. If you need assistance with any stage of your energy development project, please contact Dian Grueneich or Theresa Cho.

Dian Grueneich
(415) 268-6976
dgrueneich@mofo.com

Theresa Cho
(415) 268-6982
tcho@mofo.com

About Morrison & Foerster:

We are Morrison & Foerster—a global firm of exceptional credentials in many areas. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer*'s A-List for seven straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.